

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RONI R.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C20-5341 RSM

**ORDER AFFIRMING DENIAL OF  
BENEFITS**

Plaintiff appeals denial of her applications for Supplemental Security Income and Disability Insurance Benefits. Plaintiff contends the ALJ erred by discounting her testimony and a medical opinion, and relying on medical opinions from doctors who did not consider her migraines. Dkt. 18. As discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

**BACKGROUND**

Plaintiff is 53 years old, has a high school education, and has worked as a substance abuse counselor. Dkt. 16, Admin. Transcript (Tr.) 27-28. Plaintiff alleges disability as of December 1, 2016. Tr. 16. After conducting a hearing in November 2018, the ALJ issued a decision finding Plaintiff not disabled. Tr. 35-96, 16-29. In pertinent part, the ALJ found Plaintiff's migraine headaches and other severe physical and mental impairments limited her to

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1 simple, light work. Tr. 18, 21-22. The Appeals Council denied Plaintiff's request for review,  
 2 making the ALJ's decision the final decision of the Commissioner. Tr. 1-3.

### 3 DISCUSSION

4 This Court may set aside the Commissioner's denial of Social Security benefits only if  
 5 the ALJ's decision is based on legal error or not supported by substantial evidence in the record  
 6 as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

#### 7 A. Plaintiff's Testimony

8 When an ALJ determines a claimant has presented objective medical evidence  
 9 establishing underlying impairments that could cause the symptoms alleged, and there is no  
 10 affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to  
 11 symptom severity by providing "specific, clear, and convincing" reasons supported by  
 12 substantial evidence. *Trevizo*, 871 F.3d at 678.

13 The ALJ discounted Plaintiff's testimony of migraines and back/neck pain based on drug-  
 14 seeking behavior, Plaintiff's inconsistent statements, conflict with her activities, and effective  
 15 treatment. Tr. 23-24.

16 The ALJ determined evidence of drug-seeking behavior undermined the reliability of  
 17 Plaintiff's testimony. Tr. 24. In January 2017 Plaintiff's treating physician, Sabrina A.  
 18 Benjamin, M.D., was "concerned about her seeking more medications" when her pain control  
 19 was already "reasonable for functional issues," and concluded her medications should in fact be  
 20 decreased. Tr. 646, 652. In October 2017 Dr. Benjamin was "concerned that she always has  
 21 pain and ... wonder[ed] if pain complaints are embellished." Tr. 905. Plaintiff argues these  
 22 statements "fail to demonstrate sureness" and the record lacks "confirmed evidence" of drug-  
 23 seeking behavior. Dkt. 20 at 2-3. Plaintiff's arguments ignore the appropriate standard of

1 review. The ALJ's findings must be supported by substantial evidence, which requires only  
2 "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."  
3 *Biestek v. Berryhill*, 139 S.Ct. 1148, 1154 (2019) (internal quotation marks and citation omitted).  
4 Plaintiff concedes a June 2018 treatment note reveals "an indication of opiate abuse." Dkt. 20 at  
5 3. This note, showing a doctor assessed "[o]piates abuse and dependence with drug-seeking  
6 behavior," together with Dr. Benjamin's treatment notes, constitutes substantial evidence  
7 supporting the ALJ's finding of drug-seeking behavior. Tr. 1335. Plaintiff's doctors' concern  
8 about her exaggerating symptoms to receive more medication was a clear and convincing reason  
9 to discount Plaintiff's testimony. *See Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001)  
10 (ALJ may reject claimant's testimony based on evidence of drug-seeking behavior suggesting  
11 claimant exaggerated her symptoms to receive prescription pain medication).

12 Inconsistent statements, activities, and treatment were not valid bases to discount  
13 Plaintiff's testimony, however. The ALJ found Plaintiff's testimony of debilitating symptoms  
14 inconsistent with her report to a treating provider that she was physically able to care for her  
15 "baby granddaughter." Tr. 23 (citing Tr. 918). However, it was not Plaintiff's but her provider's  
16 assessment that she had "no physical issues that would preclude her from being able to take care  
17 of her granddaughter." Tr. 918. It is not even clear the provider was referring to a baby, since  
18 Plaintiff had no granddaughter and was helping care for her 9-year-old grandson. *See* Tr. 64-65.  
19 The ALJ's finding of inconsistent statements was not supported by substantial evidence.

20 The ALJ listed several activities but failed to explain how they contradicted Plaintiff's  
21 testimony. "Only if the level of activity were inconsistent with Claimant's claimed limitations  
22 would these activities have any bearing on Claimant's credibility." *Reddick v. Chater*, 157 F.3d  
23 715, 722 (9th Cir. 1998).

1 The ALJ found “well controlled” pain, but the cited records refer only to knee pain as  
 2 well-controlled while “[o]ther chronic pain” was assessed as “improved” without specifying to  
 3 what degree. *See, e.g.*, Tr. 893. Making “some improvement does not mean that the person’s  
 4 impairments no longer seriously affect her ability to function in a workplace.” *Holohan v.*  
 5 *Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001).

6 Inclusion of erroneous reasons was harmless, however, because the ALJ provided the  
 7 clear and convincing reason of drug-seeking behavior. *See Carmickle v. Comm’r, Soc. Sec.*  
 8 *Admin.*, 533 F.3d 1155, 1163 (9th Cir. 2008) (inclusion of erroneous reasons to discount  
 9 claimant’s testimony harmless because “remaining valid reasons supporting the ALJ’s  
 10 determination are not ‘relatively minor’”). The Court concludes the ALJ did not err by  
 11 discounting Plaintiff’s testimony.

## 12 **B. Medical Opinions**

### 13 **1. Treating Provider Leslie Noble, ARNP**

14 In a “Request for Medical Opinion” dated October 2018, Ms. Noble stated she would  
 15 expect Plaintiff to lie in a darkened room during her 19 migraine days per month. Tr. 680. The  
 16 ALJ could discount this opinion for “germane” reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1161  
 17 (9th Cir. 2014). The ALJ gave little weight to Ms. Noble’s opinion as inconsistent with  
 18 Plaintiff’s work history. In response to the question, “How long have migraines persisted at  
 19 approximately the level noted above?” Ms. Noble wrote “10-11 yrs.” Tr. 680. Yet Plaintiff  
 20 worked at the substantial gainful level until 2016, only two years before Ms. Noble’s opinion.  
 21 Tr. 27 (citing Tr. 233). After the ALJ’s decision, Plaintiff submitted to the Appeals Council a  
 22 letter from Ms. Noble clarifying 10-11 years referred to the length of time Plaintiff has suffered  
 23 migraines, but her migraines did not worsen to 19 migraine days per month until after she

1 suffered a head and neck injury in April 2014. Tr. 7. The ALJ's reasoning still stands, however,  
2 because Plaintiff continued to work until 2016. The new evidence Plaintiff provided did not  
3 deprive the ALJ's decision of substantial evidence. *See Bruton v. Massanari*, 268 F.3d 824, 827  
4 (9th Cir. 2001) (new evidence is material only if there is a reasonable possibility it would have  
5 changed the outcome of the determination). Inconsistency with Plaintiff's work history was a  
6 germane reason to discount Ms. Noble's opinion.

7 The ALJ also discounted Ms. Noble's opinion because it was based solely on Plaintiff's  
8 self-reported migraine log. Tr. 27. Plaintiff contends this was not a germane reason because the  
9 ALJ erred by rejecting Plaintiff's self-reports regarding migraines. The Commissioner contends  
10 the ALJ permissibly discounted all of Plaintiff's testimony, including regarding migraines. The  
11 Court need not address this dispute because the ALJ provided a germane reason for discounting  
12 Ms. Noble's opinion. Inclusion of erroneous reasons is harmless. *See Molina v. Astrue*, 674  
13 F.3d 1104, 1117 (9th Cir. 2012) (error harmless if "inconsequential to the ultimate disability  
14 determination").

15 The Court concludes the ALJ did not err by discounting Ms. Noble's opinion.

## 16 **2. State Agency Doctors**

17 Plaintiff contends the ALJ erred by relying on the opinions of State agency doctors  
18 because they made "no mention of the migraines in formulating their RFC opinions." Dkt. 18 at  
19 9. The doctors clearly considered migraines, noting Plaintiff's claim of migraines, assessing  
20 migraines as a severe impairment, and summarizing the evidence in the record about migraines.  
21 Tr. 114, 119-21. Directly contradicting Plaintiff's assertion, they even mentioned migraines in  
22 the RFC assessment itself. *See* Tr. 125 ("migraines" and other conditions underlie postural  
23 limitations). Plaintiff has failed to show any error. The Court concludes the ALJ did not err by

1 relying on the State agency doctors' opinions.

2 **CONCLUSION**

3 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this  
4 case is **DISMISSED** with prejudice.

5 DATED this 15<sup>th</sup> day of December, 2020.

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8 RICARDO S. MARTINEZ  
9 CHIEF UNITED STATES DISTRICT JUDGE  
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